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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DENNIS FRANKLIN,)
)
)
Defendant.)
_____)

No. CR 09-0515-PJH

**[PROPOSED] ORDER OF DETENTION
OF DEFENDANT DENNIS FRANKLIN**

The defendant Dennis Franklin came before this Court on June 1, 2009, for a detention hearing. The defendant was present and represented by Federal Public Defender Loren Stewart. Assistant United States Attorney Benjamin Tolkoff represented the United States.

The government requested detention, submitting that no condition or combination of conditions would reasonably assure the safety of the community.

Pretrial Services submitted a report recommending detention.

Upon consideration of the Pretrial Services report, the court file and the party proffers as discussed below, the Court finds by a preponderance of the evidence that no condition or

1 combination of conditions will reasonably assure the appearance of the defendant as required.
2 The Court also finds by clear and convincing evidence that no condition or combination of
3 conditions will reasonably assure the safety of the community. The Court orders the defendant
4 detained.

5 The present order supplements the Court's findings at the detention hearing and serves as
6 a written findings of fact and statement of reasons as required by 18 U.S.C. § 3142(I).

7 The Bail Reform Act of 1984, 18 U.S.C. §§ 3141-50, sets forth the factors which the
8 Court must consider in determining whether pretrial detention is warranted. In coming to its
9 decision, the Court has considered those factors, paraphrased below:

- 10 (1) the nature and seriousness of the offense charged;
- 11 (2) the weight of the evidence against the person;
- 12 (3) the history and characteristics of the person including, among other considerations,
- 13 employment, past conduct and criminal history, and records of court appearances; and
- 14 (4) the nature and seriousness of the danger to any person or the community that would
- 15 be posed by the person's release.

16 18 U.S.C. § 3142(g).

17 Defendant Dennis Franklin is charged with one count of violating 18 U.S.C. § 922(g)
18 (felon in possession of firearm). The instant charge stems from an incident on or about April 20,
19 2009, where the defendant is alleged to have been detained for suspicion of smoking cocaine
20 base (crack) in plain view of two San Francisco police officers, after which his vehicle was
21 searched and yielded a loaded .38 caliber revolver.

22 In considering all of the facts and proffers presented at the hearing, the Court finds the
23 following factors among the most compelling in reaching its conclusion that no combination of
24 conditions could reasonably assure either the defendant's appearance as required, or the
25 community's safety:

26 First, the defendant has an extensive criminal history ranging nearly thirty years, which
27 includes multiple felony convictions. Among those are the following felony narcotics
28 convictions: August 15, 1987, violation of California Health & Safety Code § 11350(a),

1 possession of narcotics; July 26, 1991, violation of California Health & Safety Code § 11350(a),
2 possession of narcotics; June 23, 1998, violation of California Health & Safety Code § 11351,
3 possession of cocaine base for sale, (conviction of three counts, for three separate offenses, July
4 6, 1997, January 4, 1998, April 25, 1998); February 9, 2000, violation of California Health &
5 Safety Code § 11352(a), transportation or sale of a controlled substance; April 16, 2008,
6 violation of California Health & Safety Code § 11350(a), possession of narcotics.

7 Second, although the defendant has no convictions for crimes of violence, the distribution
8 of narcotics presents a threat of danger to the community.

9 Third, the defendant's criminal record reflects multiple convictions for crimes committed
10 while the defendant was on probation or parole, or pending adjudication for a previous offense.
11 The fact that the defendant has continued to commit offenses while in a supervised status
12 demonstrates that he has not been receptive to control of the court.

13 Fourth, throughout his criminal history, the defendant has failed to appear for court on
14 three occasions, most recently in April, 2009.

15 These factors, among others adduced at the hearing, clearly and convincingly
16 demonstrate that if released, the defendant would be a danger to the community, and demonstrate
17 by a preponderance that if released, the defendant would not appear as required.

18 Accordingly, pursuant to 18 U.S.C. § 3142(I), IT IS ORDERED THAT:

19 (1) the defendant is committed to the custody of the Attorney General for confinement in
20 a corrections facility;

21 (2) the defendant be afforded reasonable opportunity for private consultation with his
22 counsel; and

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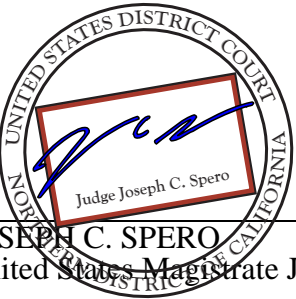
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(3) on order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to an authorized Deputy United States Marshal for the purpose of any appearance in connection with a court proceeding.

Dated: June 2, 2009



JOSEPH C. SPERO
United States Magistrate Judge